

NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule takes effect upon filing with the Secretary of State and remains in effect for 180 days. An emergency rule may be renewed for 1 or 2 180-day periods if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

NOTICE OF EMERGENCY RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION MOTOR VEHICLE DIVISION

PREAMBLE

- | | |
|---|--|
| 1. <u>Sections Affected</u>
R17-4-506 | <u>Rulemaking Action</u>
Amend |
|---|--|
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 28-366.
Implementing statutes: A.R.S. §§ 3306(A)(3), 28-1382, 28-695, 28-672, and 28-644(A)(2)
- 3. The effective date of the rules:**
October 1, 1999
- 4. Is this rulemaking a renewal of a previous emergency rulemaking? If yes, the Register citation to previous notices of emergency rulemaking:**
No.
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**
- | | |
|------------|---|
| Name: | Lynn S. Golder, Rules Attorney |
| Address: | Arizona Department of Transportation
Motor Vehicle Division, Mail Drop 507M
3737 North 7th Street, Suite 160
Phoenix, Arizona 85014-5017 |
| Telephone: | (602) 712-7941 |
| Fax: | (602) 712-1624 |
| E-mail: | lgolder@dot.state.az.us |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The Arizona Department of Transportation, Motor Vehicle Division (Division) initiated this rulemaking to amend R17-4-506(B) in order to assign appropriate points to each of the 5 new traffic offenses enacted by the legislature. The new traffic offenses are:
- a. Extreme DUI;
 - b. Aggressive driving;
 - c. Running a red light, stop sign or yield sign, or making an improper left turn and the violation results in an accident causing death to another person;
 - d. Running a red light, stop sign or yield sign, or making an improper left turn and the violation results in an accident causing serious physical injury to another person; and
 - e. Driving over or across any part of a gore area or parking in any part of a gore area.

Arizona Administrative Register
Notices of Emergency Rulemaking

These new statutory provisions require emergency amendment of R17-4-506(B) to reflect appropriate points based on the severity of the offense. Without the rule changes, the new offenses default to 2 points pursuant to the rule. Failure to implement the correct and higher points on these new offenses would result in death and serious physical harm to the citizens of the state of Arizona. Including the 5 new violations in subsection (B) of the point-system rule will enable the Division to add the correct number of points to the driving record of a person convicted of violating 1 of the new statutes. The Division's ability to remove such vehicle operators from the road, or requiring them to attend training and educational sessions is necessary to protect the health, welfare, and safety of the users of Arizona roads.

Failure to approve this rule as an emergency rule will result in imminent substantial peril to the health, welfare and safety of the citizens of this state. Each of these new violations, including the chronic problem of intersection accidents, have resulted in death and serious injuries to the public. Many of these incidents have been highly publicized in the media and are of serious concern to the legislature and the general public. A search of the MVD database indicates that during the 2-month period of 6/29/99-8/26/99, there were 71 recorded convictions of these new violations. It is mandatory that the Division take this action to prevent the deaths and maiming injuries that will undoubtedly occur between this date and final certification of the permanent rule. Through this rule, the Division will be able to implement the legislative intent of the law. It will allow us to more promptly remove these most dangerous drivers from our roads and better provide physical safety and peace of mind to our citizens.

In addition to adding the 5 new violations to R17-4-506(B), the Division is also making the following important changes to enhance the clarity and understandability of the subsection:

- a. Correcting the statutory references within the subsection to be consistent with the current numbering of A.R.S. Title 28;
- b. Moving the word "Points" from the left margin to the right margin;
- c. Adding "or actual physical control of a vehicle" to R17-4-506(B)(1) and (B)(3); and
- d. Restructuring R17-4-506(B)(3) to clarify the traffic offenses referred to in that subsection.

R17-4-506 was amended last year by emergency rule. That rule expired on June 29, 1999, and was not renewed by decision of Division employees then responsible for this process. These individuals are no longer employed by the Division. Simultaneous with this emergency rulemaking, the Division is also undertaking regular rulemaking to make necessary changes, with public participation, to the entire point-system rule, including non-urgent changes to the style and word choice of R17-4-506(B).

Laws 1998, Ch. 302, § 23 (HB 2053), adding the new offense of driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor (extreme DUI), was approved by the Governor on June 1, 1998, and filed in the Office of the Secretary of State on June 3, 1998. Laws 1998, Ch. 243, § 1 (HB 2327), adding the new offenses of failure to comply with certain traffic laws resulting in an accident that causes serious physical injury or death to another person, was approved by the Governor on May 29, 1998, and filed in the Office of the Secretary of State on June 2, 1998. Laws 1998, Ch. 159, §§ 1 and 4 (HB 2311), adding the new offenses of driving over or across or parking in any part of a gore area, and aggressive driving, was approved by the Governor on May 26, 1998, and filed in the Office of the Secretary of State on May 17, 1998.

The Division finds that it would be unconscionable not to address this issue immediately. The Division begins to look at an individual's driving habits only after assessment of 8 points, and the existing point system is insufficient. When an individual is convicted of a serious offense but is assessed only 2 points, as will continue to occur until the rule becomes effective, the Division has no authority to take more stringent, appropriate corrective action. Violations involving serious injury or even death are presently assessed only 2 points. This emergency rule would allow the situation to be immediately rectified. The health, welfare, and safety of the motoring public would be secured by requiring such vehicle operators to attend training and educational sessions or by removing them from the roadways.

Failure to institute this emergency rule would be an injustice to the citizens of the state, as there is already an unacceptable level of carnage on the state's highways. Failure to address these issues would impact law enforcement activity and the court system as well. Law enforcement officers are presently citing individuals under the aggressive driving statute believing it to be an 8-point violation subject to more stringent corrective action. Plea bargaining agreements could be made allowing an offender to "settle for" the "lesser offense" of aggressive driving in order to receive fewer points on their driving record, which would be in conflict with the intent of the law. Insurance companies often take the point value of an individual's driving record into account when prescribing insurance rates, which would result in individuals with serious offenses receiving lower rates if the 8-point rule is not in effect. All of the above situations will place the public's health, welfare and safety in jeopardy if these serious offenders are allowed to remain on the road.

Arizona Administrative Register
Notices of Emergency Rulemaking

7. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Not applicable.

8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

9. **The summary of the economic, small business, and consumer impact:**

Pursuant to A.R.S. §§ 41-1026 and 41-1055(D) the agency is exempted from providing an economic, small business, and consumer impact statement.

10. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

11. **Incorporations by reference and their location in the rules:**

Not applicable.

12. **An explanation of the situation justifying the rule's adoption as an emergency rule:**

Immediate implementation of the points for the 5 new statutory offenses impacts the public health, safety, and welfare in the most direct manner, by preventing death and serious physical injury. Each of the 5 new offenses to be included in subsection (B) addresses a serious moving violation. Offenders of these violations should be dealt with severely and should receive the maximum number of points available. Assessment of the appropriate points will enable the Division to take appropriate corrective action as to vehicle operators convicted of violating any of the new offenses.

A person with an alcohol concentration of 0.18 or more within 2 hours of driving or having actual physical control of a vehicle is guilty of extreme DUI. The extreme DUI alcohol concentration is almost double the 0.10 alcohol concentration for driving under the influence. Aggressive driving, denominated "road rage" in the media, makes Arizona roads increasingly dangerous. Under the new A.R.S. § 28-695, aggressive driving occurs when a vehicle operator engages in a course of conduct that combines an unsafe vehicle speed with at least 2 of the listed moving violations, creating "an immediate hazard to another person or vehicle." Both extreme DUI and aggressive driving call for the maximum number of 8 points upon conviction because of the severity of the vehicle operator's behavior on the roads.

New A.R.S. §§ 28-672 establishes 2 traffic offenses: running a red light, stop sign or yield sign, or making an improper left turn at an intersection that results in an accident causing either serious physical injury or death to another person. The Division has determined that 4 points are warranted when another person sustains serious physical injury as a result of the commission of such an offense, and 6 points are appropriate when another person dies.

Finally, A.R.S. § 28-644(A)(2) creates the new offense of driving over or across any part of a gore area, or parking in any part of a gore area. A "gore area" is the area indicated by 2 wide solid white lines between a surface road and a freeway entrance or exit ramp. This offense is in response to the death of a law enforcement officer who, while performing the duties of his job, was struck by a vehicle driven over or across a gore area. The Division has determined that 3 points are appropriate upon conviction of a gore area violation.

The continued health, safety, and welfare, of the public require the Division to immediately assign the appropriate points to the 5 new traffic offenses. Taking suitable corrective action based on driving record points will assuredly lessen the incidence of injury or death to Arizona motorists by reducing the likelihood that drivers convicted of these serious traffic violations will engage in similar driving behavior in the future, or even by removing such drivers from the roads entirely. The Division's ability to take suitable corrective action should begin without further delay. Preventing even 1 injury or death on the Arizona roadways warrants the emergency amendment of R17-4-506(B).

13. **The date of the Attorney General's approval of the emergency rule:**

October 1, 1999

14. **The full text of the rules follows:**

Arizona Administrative Register
Notices of Emergency Rulemaking

TITLE 17. TRANSPORTATION

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION**

ARTICLE 5. DRIVER LICENSES

Sections

R17-4-506. Driver license point system

ARTICLE 5. DRIVER LICENSES

R17-4-506. Driver license point system

- A. No change.
- B. Point system. For the purpose of determining under A.R.S. § ~~28-3306(A)(3)~~ ~~28-446(A)(3)~~ when there has been a such frequency of convictions or judgments of serious offenses against traffic regulations governing the movement of vehicles as to warrant suspension or to require any licensee to attend and successfully complete approved training and educational sessions designed to improve the safety and habits of drivers, the following convictions or judgments shall ~~be~~ ~~have~~ assigned ~~to them~~ the points indicated below:

Points	Points
1. Conviction of violation of A.R.S. § 28-1381 28-692 , driving or <u>actual physical control of a vehicle while under the influence of intoxicating liquor or drugs.</u>	8
2. <u>Conviction of violation of A.R.S. § 28-1382, driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor.</u>	<u>8</u>
23. Conviction of violation of A.R.S. §§ 28-1381 28-692 , driving or actual physical control of a vehicle while under the influence of intoxicating liquor or drugs, and 28-693, reckless driving, when both violations are charged in 1 citation, driving while under the influence of intoxicating liquor or drugs and with reckless driving.	8
34. Conviction of violation of A.R.S. § 28-693, reckless driving.	8
45. Conviction of violation of A.R.S. § 28-708, racing on highways.	8
56. <u>Conviction of violation of A.R.S. § 28-695, aggressive driving.</u>	<u>8</u>
67. Conviction or judgment of a violation of A.R.S. §§ 28-662, 28-663, 28-664, 28-665, leaving the scene of an accident.	6
<u>8. Conviction or judgment of a violation of A.R.S. § 28-672(C), failure to comply with a red traffic control signal, failure to yield the right of way when turning left at an intersection or failure to comply with a stop sign or yield sign, and the failure results in an accident causing death to another person.</u>	<u>6</u>
<u>9. Conviction or judgment of a violation of A.R.S. § 28-672(A), failure to comply with a red traffic control signal, failure to yield the right of way when turning left at an intersection or failure to comply with a stop sign or yield sign, and the failure results in an accident causing serious physical injury to another person.</u>	<u>4</u>
610. Conviction or judgment of a violation of A.R.S. § 28-701, speeding.	3
<u>11. Conviction or judgment of a violation of A.R.S. § 28-644(A)(2), driving over or across or parking in any part of a gore area.</u>	<u>3</u>
712. Conviction or judgment of a violation of any other traffic regulation governing the movement of vehicles.	2

- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.